

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

WILLIAM R. YOUNG)	
Claimant)	
VS.)	
)	Docket No. 196,467
CASCO, INC.)	
Respondent)	
AND)	
)	
LIBERTY MUTUAL INSURANCE COMPANY)	
Insurance Carrier)	

ORDER

Respondent and its insurance carrier requested review of the Award dated March 5, 1996, entered by Administrative Law Judge Shannon S. Krysl. The Appeals Board heard oral argument on August 6, 1996.

APPEARANCES

James P. Johnston of Wichita, Kansas, appeared for the claimant. Douglas D. Johnson of Wichita, Kansas, appeared for the respondent and its insurance carrier.

RECORD AND STIPULATIONS

The record considered by the Appeals Board and the parties' stipulations are listed in the Award.

ISSUES

The Administrative Law Judge awarded claimant permanent partial disability benefits for a 60.8 percent work disability for the period between December 21, 1994, and September 1, 1995, and for a 34.8 percent work disability for the period commencing

September 1, 1995. Respondent and its insurance carrier requested review of the following issues:

- (1) Did claimant sustain personal injury by accident which arose out of and in the course of employment?
- (2) What is the nature and extent of claimant's injury and disability?
- (3) Are claimant's unemployment records properly included as part of the evidentiary record to be considered for final award?

Those are the only issues before the Appeals Board on this review.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After considering the entire record, the Appeals Board finds as follows:

The Award entered by the Administrative Law Judge should be reversed.

Claimant alleges he injured his back and neck when he was struck by a fork lift while working for respondent on November 8, 1994. Respondent and its insurance carrier contend claimant's workers compensation claim is contrived.

Claimant testified he was struck in the back and hip by boxes stacked on a fork lift as it backed around a corner. He alleges he jumped forward to avoid the fork lift but was knocked onto a table in front of him by the force of impact which he described as similar to being hit with a large bat. Respondent and its insurance carrier presented witnesses to the incident who testified in striking contrast.

Shannon Ford, in describing claimant's alleged accident, testified claimant was directly in front of her on the other side of the table where she was working when the fork lift passed. She testified she was talking to claimant when the fork lift passed and claimant neither jumped out of the way of the fork lift nor did he fall onto the table as he has alleged. She also testified claimant told her shortly after the incident "to stay by his side because there was going to be a lot of money involved."

Lucille Prochaska was working across the aisle from claimant at the time of the alleged accident. She testified the fork lift was moving very slowly past claimant and that he moved his left leg to avoid contact with the skid which was being carried on the fork lift as it turned the corner. She also testified that claimant made no sudden movement as the fork lift passed. She was watching the fork lift at the time of the alleged incident because she was waiting for it to pass.

The fork lift driver, Candace Watkins, testified she was backing slowly and cautiously past claimant at the time of the alleged incident. She also testified she could see claimant

while she turned the corner and did not see the load strike claimant or see claimant react as if he had been pushed or struck by the load. She indicated she did not realize claimant was alleging he had been struck by the fork lift until she came into work the next day.

The Appeals Board finds the testimony of claimant's coworkers convincing and persuasive. Ms. Ford, Ms. Prochaska, and Ms. Watkins were all in a position to witness the alleged incident and they would appear to be disinterested in the outcome of the litigation. The Appeals Board finds Ms. Ford, Ms. Prochaska, and Ms. Watkins are more credible than claimant. Based upon the testimony of those witnesses, the Appeals Board finds claimant has failed to prove it is more probably true than not that he sustained personal injury by accident arising out of and in the course of employment with respondent as alleged. Therefore, claimant's award of benefits should be reversed.

Based upon the above findings and conclusion, the remaining issues set forth above are rendered moot.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award dated March 5, 1996, entered by Administrative Law Judge Shannon S. Krysl should be, and hereby is, reversed and all benefits are hereby denied.

IT IS SO ORDERED.

Dated this ____ day of July 1997.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: James P. Johnston, Wichita, KS
Douglas D. Johnson, Wichita, KS
Administrative Law Judge, Wichita, KS
Philip S. Harness, Director